

New ways for official secrecy

A curious and homespun legal decision taken last week may have serious implications, not least for the practice of investigative journalism. In the (as yet uncelebrated) case of the *Post Office and Campbell* (separately) *v the Metropolitan Police*, a North London magistrates' bench appeared to have decided that, contrary to almost everything trainee lawyers are taught, information is property. The case arose as a final swansong from last year's Official Secrets Act trial in which I and others were accused of breaches of the Act in an interview two years ago. During the case, the police held a large part of my files as potential evidence, releasing huge chunks as various charges collapsed. The Post Office, however, lodged a claim last November that various items, for the most part photocopies of Post Office internal documents, belonged to them.

Our separate claims to have the items handed over by the police were heard last week. For the record, the 16 items included four official circulars about not speaking to the Press, two staff telephone directories, a survey of Parcels Post Marketing information, two circulars blacklisting a communications company, a telephone operator's manual, specifications of a telephone tapping equipment and a page from the (entirely public) Constabulary Almanac, amongst others. Collectively, said the Post Office, they could be used to 'sabotage, infiltrate or misuse' the telephone system. The whole tenor of their remarks echoed the now rather absurd claims made during the Official Secrets Act

trial itself about the significance of the material involved. Indeed, last week's hearing was in reality an attempt at creating a surrogate Official Secrets Act, since the Post Office had already unsuccessfully sought permission from the former Attorney General for a Section 2 prosecution concerning some of the same documents.

The Post Office claimed to the magistrates that the photocopies were theirs, although the sheets of paper and ink thereon were admittedly mine,



because the information contained on the paper was theirs. The magistrates agreed, and handed them some twelve of the items, with the rest to me. No reasons were given for this decision, which has astonished legal specialists in copyright and secrecy laws. The most alarming aspect of the decision is the apparent acceptance of the idea of property rights in information, which if it found its way into general law, would pose a very serious threat to investigations of all kinds.

Serious investigations on matters of public interest, such as the recent Rampton hospital disclosures, are already considerably hampered, not least by the Official Secrets Act. Actions for breach of confidence and breach of copyright are a further major obstacle, and were for example key factors which allowed the Distillers company to pursue the legal suppression of the *Sunday Times's* thalidomide investigations.

Last week's case was unusual, in that the documents were already in police hands and a third party, the Post Office, then claimed them. But it is not difficult to envisage circumstances where the same sort of technique could be used by the subject of an investigation to demand the return of any copies made of non-public documents. I may yet have to sue the Post Office for 'civil theft' to clarify this situation. In the meantime, however, further copies of the documents retained by the Post Office are mostly in fact available (in other hands). It is doubtful whether they will lead anyone to 'sabotage, infiltrate or misuse' the Post Office's diligently safeguarded facilities.

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